

**Internal Revenue Service  
Regional Commissioner**

**Department of the Treasury**

**Date:** 13 JAN 1988

**Employer Identification Number:**  
[REDACTED]

**Form Number:**  
[REDACTED]

**Tax Years:**  
[REDACTED]

**Key District:**  
[REDACTED]

**Person to Contact:**  
[REDACTED]

**Contact Telephone Number:**  
[REDACTED]

**Gentlemen:**

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

You do not qualify for exemption from Federal income tax under the provisions of section 501(c)(3) of the Code because you are organized and operated primarily to sell books and literature to churches. You are not organized and operated exclusively for charitable or educational or religious purposes as described under section 501(c)(3) of the Code.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

(over)

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]

[REDACTED]

Chief, Appeals Office

Internal Revenue Service

District  
Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 4520.

Person to Contact:

Telephone Number:

Refer Reply to:

EF/EO

Date:

AUG 13 1986

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892 (Rev. 7-83), "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone

[REDACTED]

who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosures: 3

Enclosure I

[REDACTED]

The information submitted indicates that you were formed in [REDACTED] as a nonprofit, stock basis, [REDACTED] Corporation. Your Articles of Incorporation state that your purposes are "To import and distribute books, Sunday School material, leaflets, pamphlets and other related materials to the Churches and Sunday Schools of [REDACTED]."

Your application states that your planned activities are:

The activities of the [REDACTED] consists primarily in the importing of [REDACTED] materials which are almost exclusively printed in [REDACTED].

These books, pamphlets, and Sunday School lessons have to be imported in bulk and then distributed as required to the various [REDACTED] throughout the United States and Canada."

Secondary activities consist of: Distributing Bibles, Concordances and Sunday School resource material which are purchased in bulk and then distributed as required to the various Ecclesias and Ecclesial Sunday Schools throughout the United States and Canada. Mailings are made on a monthly basis on new material and a catalogue is issued once a year. Out of print materials and worksheets are reproduced as well as Evangelical material.

The Corporation is not at the present active as it is currently operating under [REDACTED] which is a registered non-profit corporation. Due to the size and volume and multi-ecclesial nature of [REDACTED], the Board of Elders has requested we become an independent non-profit corporation.

Additional information submitted during the review of the application disclosed that the shareholders of the corporation are [REDACTED] and [REDACTED]. Each of these individuals owns [REDACTED] shares of stock with a par value of \$1.00. No dividends will be paid to the stockholders.

The stockholders have voting power regarding the election of officers and directors and policy of the organization.

The plan of marketing and selling the books is with them to be primarily

Enclosure I

[REDACTED]

distributed to individual churches and church leaders for the purpose of Sunday School teaching, Evangelical work and adult education. This will be done through a mailing list and catalogue.

The organization plans to sell the books at slightly above cost. Any profits derived from the book sales will be used to finance the reprinting of currently out of print books and the expansion of inventory.

Most of the material the organization sells will be used by Churches for the teaching of Sunday School for Evangelical work or for adult education. Except for a small number of items carried as fund raiser type items, all items will be used by non-profit organizations in teaching type activities.

The distribution and use of these materials is strictly a service to [REDACTED]. Each one is a non-profit corporation and the materials are for their use.

Most of the work of the organization is done by people who are not paid for their services. Other such work as packaging will be done for pay.

The organization does not do any publishing of its own unless the reprinting of out of print or currently unavailable material is considered 'publishing'. With this exception, the organization simply resells publications of others.

Budgets for [REDACTED] and [REDACTED] submitted with the application show a [REDACTED] percent profit factor is anticipated from book sales.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

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Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The requirement that an organization must be "organized and operated exclusively for" exempt purposes in order to qualify for exempt status poses two tests, which must be independently satisfied.

Section 1.501(c)(3)-1(b)(4) of the Regulations requires that an organization's assets be permanently dedicated to exempt purposes.

In Fides Publishers Assn. v. U.S., 263 F.Supp. 924 an organization was formed for the following purposes:

"Printing, publishing, distributing, wholesale and retail, books and pamphlets and other publications to promote Christian culture and doing all things necessary thereto to the extent that an individual would be able to do, also to promote without profit arts, crafts and trade."

In Fides, the court held that exemption under section 501(c)(3) be denied when the taxpayer is being operated for a non-exempt purpose that is substantial. The purpose in Fides was the publication and sale of religious literature at a profit. If Fides were allowed exemption, then every publishing house would be entitled to an exemption on the grounds that it furthers education of the public.

The court further stated that:

"To deny that Fides, an independent profit-making publisher of specialized literature, is operated for a business purpose, is to avoid reality. Having no other function, that purpose must be ascribed to it notwithstanding sincere disclaimers of any such intent. As the Court of Claims recognizes, one may enter a business unwittingly. Having done so, the attendant responsibilities must be borne. In short, the tax must be paid."

Enclosure I

[REDACTED]

In American Institute for Economic Research, 302 F.2d 934 the court came to a similar conclusion:

"By the sale of these publications and services, plaintiff has entered, unwittingly or not, a business. We conclude that this business purpose is primary and not incidental to any educational purpose which may be present. It is not the fact of profits alone which compels this conclusion; the plaintiff is also hampered, as we have discussed above, by the methods it has selected to disseminate this type of subject matter." 302 F.2d at 938.

In Scripture Press Foundation v. U.S., 285 F.2d 800 (1961), cert. den. 363 U.S. 985 (1962) the court concluded:

"Tax-exempt status as religious organization denied religious publishing house. Its accumulations from sales, as compared with its expenditures for religious instruction programs, revealed that the sale of religious literature was its primary activity, and that its instructional phase was incidental thereto."

[REDACTED]'s Articles of Incorporation at Article III states that the corporation is organized on a stock basis; the aggregate number of shares authorized is [REDACTED] and the number of shares issued is [REDACTED].

An organization that is a stock corporation can not meet the organizational requirements of section 501(c)(3) of the Code unless its charter provides:

- a) No dividends will be paid on the stock, and
- b) The stock cannot be redeemed at a price greater than that initially paid for it.

Therefore, [REDACTED] does not meet the organizational requirements of section 501(c)(3) of the Code.

[REDACTED]'s primary activity will be the importation, reprinting, sale and distribution of religious books to individual churches and others at a profit.

This type of trade or business does not meet the operational test of section 501(c)(3) of the Code since it is not a religious or educational



Enclosure 1

[REDACTED]  
purpose as described therein and affirmed by the courts in Fides Publishers Assn., American Institute for Economic Research and Scripture Press.

Accordingly, we have concluded that [REDACTED] does not meet either the organizational or the operational tests of section 501(c)(3) of the Code and exemption is denied.